IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.5256 OF 2006
IN
FIRST APPEAL (ST) NO.29292 OF 2006

Laxmilal @ Laxmichand D. Jain & Ors. ...Applicants
Versus
Mrs Madhurika Arvind Joshi ...Respondent

Mrs Ranjana Parab i/by Shri V.R.Tripathi for the Applicants.
Shri Niranjan Lapashiya i/by M/s.Niranjan & Co. for the Respondent.

CORAM : A. S. OKA, J.
DATE : JANUARY 16, 2007.

P.C.:

1. The prayer in this Application is for condonation of delay of 167 days. The said Application is opposed by the Advocate appearing for the Respondent by contending that against the same decree an Appeal From Order was filed which is withdrawn. His second contention is that against the decree which is subject matter of the Appeal, a Writ Petition has been filed which is pending in this court. Perusal of the averments made in the affidavit-in-reply show that the Appeal From Order was filed for challenging order passed on 01st November, 2006 on a Notice of Motion taken out for setting aside the decree. Thus, in the Appeal From Order, there is no challenge to the decree passed which is subject matter of the Appeal. The

learned Advocate for the Respondents could not substantiate that the Writ Petition is filed for challenging the decree which is subject matter of the Appeal. He read the prayer in the Writ Petition which shows that the Writ Petition is directed against the order dated 01st November, 2006. Therefore, there is no merit in the said objections raised by the Advocate for the Respondents as the said objections are not tenable on the face of it. He tried to submit that as Application for setting aside ex-parte decree has been rejected, the Appeal is not maintainable. There is no merit in the said submission as explanation to Rule 13 of Order 9 of the Code of Civil Procedure, 1908 will not help the Respondent. There is sufficient cause for condonation of delay in view of the averments made in the Application. However, the Respondent will have to be compensated by ordering payment of costs.

2. Rule is made absolute in terms of prayer clause (a) subject to the Appellants paying costs of Rs.3,000/- to the Respondent within a period of three weeks from today. Payment of costs will be condition precedent. Place the Appeal for admission on 13th February, 2007.

JUDGE